

STATE BOARD OF EQUALIZATION

OFFICE CORRESPONDENCE

295.0680

Place: Sacramento
Date: April 9, 1951

To: Mr. W. E. Williams

From: E. H. Stetson

Re: H--- M---
Attorney at Law
Suite XXX --- --- Building
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Account No. X-8349

With reference to your comments in your memo of April 3, we affirm our opinion that even though advertising material is sold for less than its cost we do not think that the difference between the cost and the selling price represents a taxable figure, unless the sold reason for selling below cost is to avoid or minimize the tax, with the true selling price being in some manner concealed or paid through some indirect method. Our position assumes, of course, that the transaction is a bona fide business transaction not designed to cheat the State by setting up a fictitious sales price.

It must be recognized that there are certain legitimate means of avoiding or minimizing taxes which the Courts have recognized. For example, the Supreme Court held it was perfectly proper for the Standard Oil Company and the Southern Pacific Company to enter into a contract for the shipment of fuel oil to a point outside the State via the purchasing carrier. As long as it was necessary to get the oil to a point outside the State, there was nothing wrong in the parties using a means that would result in a nontaxable sale. Of course, if the property were intended to be brought back into the State, then the device of shipping it outside the State solely to avoid sales tax would probably not have been recognized as legitimate tax avoidance.

EHS:ph